

3 **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT**
4 **WAYNE, INDIANA, REGARDING THE APPROVAL OF A PARKING**
5 **STRUCTURE LEASE AND THE APPROPRIATION OF AVAILABLE**
6 **COUNTY ECONOMIC DEVELOPMENT INCOME TAX REVENUES AND**
7 **LOCAL INCOME TAX REVENUES TO PAY RENTS DUE PURSUANT TO**
8 **A PARKING STRUCTURE LEASE WITH REGARD TO AN ECONOMIC**
9 **DEVELOPMENT PROJECT FOR A NEW MIXED-USE RIVERFRONT**
10 **BUILDING TO BE UNDERTAKEN BY RIVERVIEW FW LLC**

11 WHEREAS, the Fort Wayne Redevelopment Commission (the
12 “Commission”), governing body of the City of Fort Wayne, Indiana, Department of
13 Redevelopment (the “Department”) and the Redevelopment District of the City of
14 Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment
15 of Cities and Towns Act of 1953, which has been codified in Indiana Code 36-7-14
16 et seq., as amended from time to time (the “Act”); and

17 WHEREAS, the Commission has previously designated and declared
18 in accordance with the Act an area in the City of Fort Wayne, Indiana (the “City”),
19 known as the Riverfront 1 / Columbia Street, to be a redevelopment area and an
20 allocation area (the “Area”), adopted a Redevelopment Plan, and established an
21 allocation fund for said Area; and

22 WHEREAS, the Commission has entered into an Economic
23 Development Agreement (“EDA”) with Riverview FW LLC, a Minnesota limited
24 liability company (the “Developer”), wherein the Developer will agree to develop
25 and construct a mixed-use building consisting of a multi-family component, a
26 streetscape retail component and a parking structure, constituting an aggregate
27
28

1 investment of approximately Sixty-Two Million and No/100 Dollars
2 (\$62,000,000.00), to be located within the Area at the northeast corner of Superior
3 Street and Harrison Street along the riverfront in downtown Fort Wayne (the
4 “Project”), and the Commission agreed to provide certain economic development
5 incentives; and
6

7 WHEREAS, the Commission has determined that the completion of
8 the Project is in the best interests of the citizens and taxpayers of the City and, to
9 stimulate and induce the completion of the development of the Project, the
10 Commission agreed in the EDA, subject to further proceedings as required by law, to
11 provide certain economic development incentives in exchange for the development
12 of the Project; and
13

14 WHEREAS, the Commission agreed to provide support to the Project
15 pursuant to the EDA in substantially the form of the Parking Structure Lease
16 attached hereto as Exhibit A and incorporated herein by reference (“Lease”), wherein
17 the Commission shall lease, operate and manage the parking structure for a period of
18 twenty-five (25) years for an annual lease rental equal to One Million Five Hundred
19 Thousand and No/100 Dollars (\$1,500,000.00); and
20

21 WHEREAS, the Commission shall pledge the tax increment revenues
22 generated by the Project (“TIF Revenue”) and the revenue generated by the
23 Commission’s operation of the parking structure pursuant to the Lease (“Operating
24 Revenue”) to the payment of the amount due pursuant to the Lease; and
25

26 WHEREAS, the Commission has requested the appropriation of
27 riverfront Local Income Tax revenues in the amount of Two Hundred Fifty
28

1 Thousand and No/100 Dollars (\$250,000.00) per year to the payment of the annual
2 rent pursuant to the Lease (“LIT Revenue”); and

3 WHEREAS, the Commission has requested the appropriation of
4 County Economic Development Income Tax revenues to the payment of the annual
5 rent pursuant to the Lease (“CEDIT Revenue”); and

6
7 WHEREAS, the Common Council has determined that the
8 completion of the Project is in the best interests of the citizens and taxpayers of the
9 City and desires to provide for the stimulation and inducement of the Project,
10 approve the Lease and appropriate the LIT Revenue and CEDIT Revenue as
11 provided in this Resolution;

12
13 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
14 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

15 1. The Common Council finds, determines, ratifies and confirms
16 that the Project is in the best interests of the citizens and taxpayers of the City of Fort
17 Wayne and will support the redevelopment goals of the City of Fort Wayne in the
18 Area.

19
20 2. The Common Council hereby finds and determines that the
21 Lease is in the best interests of the citizens and taxpayers of the City of Fort Wayne
22 and the Lease is approved in substantially the form attached to this Resolution as
23 Exhibit A.

24
25 3. The Common Council does hereby appropriate and pledge to
26 the payment of annual rent pursuant to the Lease an amount of LIT Revenue not to
27 exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per year.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30


4. The Common Council does hereby appropriate and pledge to the payment of annual rent pursuant to the Lease an amount of CREDIT Revenue necessary to pay the annual rent pursuant to the Lease after first applying the TIF Revenue and Operating Revenue pledged by the Commission and the LIT Revenue appropriated and pledged by this Common Council.

5. This Resolution shall be in full force and effect from and after the time it has been adopted by Common Council, approved by the Mayor and otherwise executed and delivered in accordance with any and all laws appertaining thereto.



Council Member

APPROVED AS TO FORM AND LEGALITY:



Carol Helton, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

EXHIBIT A
PARKING STRUCTURE LEASE

(See attached)

Exhibit A

PARKING STRUCTURE LEASE

By and Between

**RIVERVIEW FW LLC,
a Minnesota limited liability company**

as Landlord

**THE CITY OF FORT WAYNE, INDIANA,
REDEVELOPMENT AUTHORITY**

as Tenant

and

**THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

as Subtenant

Dated

_____, 2018

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 RECITALS; DEFINITIONS	2
Section 1.01 Recitals.....	2
Section 1.02 Lease and Sublease	2
Section 1.03 Definitions.....	2
ARTICLE 2 GRANT AND TERM OF LEASE.....	4
Section 2.01 Premises	4
Section 2.02 Term.....	4
Section 2.03 Covenants of Title and Quiet Enjoyment.....	4
Section 2.04 Development Agreement	4
Section 2.05 Surrender of Premises	5
Section 2.06 Common Areas	5
Section 2.07 Utilities.....	5
ARTICLE 3 CONSTRUCTION.....	5
Section 3.01 Parking Structure Construction Obligations of Landlord	5
Section 3.02 Mixed-Use Project Construction Obligations of Landlord.....	6
Section 3.03 Parking Structure Construction Schedule	6
Section 3.04 Mixed-Use Project Construction Schedule.....	6
Section 3.05 Construction Cooperation	6
ARTICLE 4 RENT AND EXPENSES	7
Section 4.01 Base Rent	7
Section 4.02 Past Due Payments.....	8
Section 4.03 Place of Payments	8
Section 4.04 Real Estate Taxes and Assessments.....	8
Section 4.05 Utilities.....	8
Section 4.06 General Provisions.....	8
ARTICLE 5 USE OF PREMISES; ALTERATIONS AND IMPROVEMENTS.....	9
Section 5.01 Use of Premises.....	9
Section 5.02 Alterations and Improvements.....	9
Section 5.03 Restrictions on Use	9
ARTICLE 6 MAINTENANCE.....	9
Section 6.01 Parking Structure Maintenance.....	9
ARTICLE 7 INSURANCE.....	10
Section 7.01 Insurance	10
Section 7.02 Waiver of Subrogation.....	11

ARTICLE 8 CONDEMNATION AND CASUALTY	11
Section 8.01 Condemnation.....	11
Section 8.02 Casualty.....	12
ARTICLE 9 DEFAULTS AND REMEDIES.....	12
Section 9.01 Default.....	12
Section 9.02 Remedies.....	13
Section 9.03 Attorney Fees.....	13
ARTICLE 10 ASSIGNMENT AND SUBLETTING.....	13
Section 10.01 Assignment and Subletting	13
Section 10.02 Permitted Subleases	14
Section 10.03 Permitted Assignments	14
Section 10.04 Permitted Landlord Assignment	14
ARTICLE 11 REPRESENTATIONS AND WARRANTIES.....	14
Section 11.01 Representations and Warranties of Landlord.....	14
Section 11.02 Representations and Warranties of Tenant	15
ARTICLE 12 HAZARDOUS MATERIALS.....	15
Section 12.01 Environmental Obligations	15
Section 12.02 Tenant's Indemnification	15
Section 12.03 Landlord's Indemnification	15
ARTICLE 13 LANDLORD PARKING RIGHTS AND OBLIGATIONS.....	16
Section 13.01 Landlord Parking Rights	16
ARTICLE 14 OTHER SENIOR PARKING RIGHTS	16
Section 14.01 Allen County, Indiana.....	16
Section 14.02 Superior Lofts, LLC.....	16
Section 14.03 Houndstooth Territory Group, Inc.	16
Section 14.04 Nondisturbance	17
ARTICLE 15 MISCELLANEOUS	17
Section 15.01 Permitted Delays.....	17
Section 15.02 Memorandum of Parking Structure Lease	17
Section 15.03 Real Estate Commissions.....	17
Section 15.04 Subordination, Nondisturbance and Attornment	17
Section 15.05 Notices	18
Section 15.06 Construction and Interpretation	19
Section 15.07 Counterparts.....	20
Section 15.08 Rights of Inspection	20
Section 15.09 Mechanic's Liens.....	20
Section 15.10 Coordination with Development Agreement.....	20

Section 15.11	No Merger	20
Section 15.12	Estoppel Certificates	20
Section 15.13	Waivers	21
Section 15.14	Relationship of Parties	21
Section 15.15	Consent	21
Section 15.16	Successors or Assigns	21
Section 15.17	Disputes.....	21
Section 15.18	Interest Rate	22
ARTICLE 16 OPTION TO PURCHASE.....		22
Section 16.01	Definitions.....	22
Section 16.02	Option to Purchase.....	22
Section 16.03	Purchase Price for Premises.....	22
Section 16.04	Survey of Premises	23
Section 16.05	Title to Premises	23
Section 16.06	Conditions to Closing	24
Section 16.07	Proration of Real Estate Taxes.....	25
Section 16.08	Closing	25

EXHIBITS

Exhibit A	Legal Description of the Riverview Parcel
Exhibit B	Description of the Parking Structure
Exhibit C	Legal Description of the Parking Structure Parcel
Exhibit D	Description of the Mixed-Use Project
Exhibit E	Legal Description of Mixed-Use Parcel
Exhibit 2.06	Parking Structure and Mixed-Use Project Common Areas
Exhibit 3.01	Parking Structure Plans and Specifications
Exhibit 3.02	Mixed-Use Project Plans and Specifications
Exhibit 3.03	Parking Structure Construction Schedule
Exhibit 3.04	Mixed-Use Project Construction Schedule
Exhibit 7.01	Insurance
Exhibit 13.01	Landlord Parking Spaces
Exhibit 15.02	Memorandum of Parking Structure Lease

PARKING STRUCTURE LEASE

THIS PARKING STRUCTURE LEASE (this "Lease") is made and entered into as of _____, 2018 (the "Effective Date"), by and between RIVERVIEW FW LLC, a Minnesota limited liability company ("Landlord"), CITY OF FORT WAYNE, INDIANA, REDEVELOPMENT AUTHORITY ("Tenant") and CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT ("Subtenant").

WHEREAS, Landlord and Subtenant entered into that certain Economic Development Agreement dated December 11, 2017 ("Development Agreement"); and

WHEREAS, in accordance with the Development Agreement, Subtenant conveyed to Landlord a parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, containing approximately 3.3 acres and legally described on **Exhibit A** attached hereto and incorporated herein by reference ("Riverview Parcel"), as evidenced by a Deed dated _____ and recorded on _____, as Document No. _____ in the Office of the Recorder for Allen County, Indiana; and

WHEREAS, in accordance with the Development Agreement, Landlord shall construct a parking structure, described on **Exhibit B** attached hereto ("Parking Structure"), upon a portion of the Riverview Parcel as legally described on **Exhibit C** attached hereto ("Parking Structure Parcel"); and

WHEREAS, in accordance with the Development Agreement, Landlord shall construct a mixed-use retail and residential building, as more particularly described in **Exhibit D** attached hereto and incorporated herein by reference ("Mixed-Use Project"), upon a portion of the Riverview Parcel legally described on **Exhibit E** hereto ("Mixed-Use Parcel"), in accordance with the terms and conditions set forth herein; and

WHEREAS, in accordance with the Development Agreement, Tenant shall lease the Parking Structure from Landlord, and Tenant shall sublease the Parking Structure to Subtenant upon the terms and conditions set forth in this Lease; and

WHEREAS, Tenant enters into this Lease pursuant to the authority granted by virtue of Indiana Code 36-7-14.5-12 solely for the purpose of entering into a sublease with Subtenant pursuant to the authority granted to Tenant and Subtenant by virtue of Indiana Code 36-7-14-25.2; and

WHEREAS, for purposes of this Lease, Subtenant shall sublease from Tenant all of Tenant's rights and obligations pursuant to this Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE 1
RECITALS; DEFINITIONS

Section 1.01 Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

Section 1.02 Lease and Sublease. Landlord acknowledges and agrees that this Lease shall constitute a lease from Landlord to Tenant and a sublease from Tenant to Subtenant pursuant to which the Subtenant agrees to assume entirely the rights and obligations of the Tenant pursuant to this Lease. Throughout the balance of this Lease, the reference to the "Tenant" shall reference the rights and obligations of the Tenant and the Tenant's Estate as leased to Tenant and subleased to Subtenant.

Section 1.03 Definitions. For all purposes of this Agreement and all exhibits and schedules to this Agreement, except as otherwise expressly provided, the following terms shall have the meanings assigned to them in this Section or in the Section referenced after such term:

"Alterations" means any alterations and modifications, rehabilitation or remodeling and additional improvements to the Parking Structure made after completion of the initial construction of the Parking Structure.

"Commencement Date" shall mean the date which is the first day of the next month following the occurrence of the Parking Structure Substantial Completion Date.

"Development Agreement" means that certain Economic Development Agreement entered into by and between Landlord and Tenant dated December 11, 2017.

"Effective Date" has the meaning set forth in the introductory paragraph of this Agreement.

"Event of Default" has the meaning set forth in Section 9.01 of this Lease.

"Landlord" means Riverview FW LLC, a Minnesota limited liability company, its respective successors and assigns.

"Lease" means this Parking Structure Lease, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

"Mixed-Use Parcel" means that certain parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, legally described on Exhibit E attached hereto and incorporated herein by reference, comprising approximately 1.1 acres of the 3.3-acre Riverview Parcel.

"Mixed-Use Project" means the residential and retail development described on Exhibit D and reflected upon the Mixed-Use Project Plans and Specifications attached hereto as Exhibit 3.02.

“Mixed-Use Project Plans and Specifications” means the final plans and specifications for the Mixed-Use Project which are described on **Exhibit 3.02**, attached hereto and incorporated herein by reference.

“Mortgagee” shall be any bank, insurance company, pension fund or other individual, corporation, partnership or other entity which is making a bona fide loan, take back purchase money mortgage, or an assignment sub-leaseback transaction and which is the holder of a beneficial interest and a secured position under any Permitted Mortgage (as defined in Section 15.04), but shall not include a mortgage or other encumbrance given with the intention of implementing a foreclosure to avoid the assignment restrictions contained in this Lease.

“Option to Purchase” shall have the meaning set forth in Article 16 of this Lease.

“Parking Structure” means the parking structure described on **Exhibit B** and reflected upon the Parking Structure Plans and Specifications attached hereto as **Exhibit 3.01**.

“Parking Structure Parcel” means that certain parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, legally described on **Exhibit C** attached hereto and incorporated herein by reference, comprising approximately 2.2 acres of the 3.3-acre Riverview Parcel.

“Parking Structure Plans and Specifications” means the final plans and specifications for the Parking Structure which are described on **Exhibit 3.01**, attached hereto and incorporated herein by reference.

“Parking Structure Substantial Completion Date” shall be the date the Parking Structure is substantially complete as provided in Section 3.03 hereof.

“Permitted Delays” has the meaning set forth in Section 15.01 of this Lease.

“Permitted Mortgage(s)” has the meaning set forth in Section 15.04 of this Lease.

“Premises” means the Parking Structure Parcel and the improvements and fixtures which shall constitute the Parking Structure constructed upon the Parking Structure Parcel by Landlord and leased to Tenant pursuant to this Lease, as more particularly described in Section 2.01 of this Lease.

“Real Estate Taxes” means and includes such installments of *ad valorem* real property taxes and assessments levied upon or with respect to the Parking Structure Parcel, including land and improvements and all use, impact and related fees or costs associated therewith, which become due and payable during the Lease Term.

“**Riverview Parcel**” means that certain parcel of real estate located in the City of Fort Wayne, Allen County, Indiana, legally described on **Exhibit A** attached hereto and incorporated herein by reference.

“**Subtenant**” means City of Fort Wayne, Indiana, Department of Redevelopment.

“**Tenant**” means City of Fort Wayne, Indiana, Redevelopment Authority. Tenant shall also have the meaning set forth in Section 1.02 of this Lease.

“**Tenant’s Estate**” means Tenant’s interest in the Parking Structure, this Lease or any permitted sublease of this Lease.

“**Term**” shall have the meaning has the meaning set forth in Section 2.02 of this Lease.

ARTICLE 2 GRANT AND TERM OF LEASE

Section 2.01 Premises. For and in consideration of the terms and conditions set forth in the Development Agreement and hereinafter stated, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Parking Structure Parcel together with the Parking Structure to be constructed thereon by Landlord pursuant to the terms and conditions of this Lease. The Parking Structure Parcel, together with the Parking Structure to be constructed by Landlord and located thereon shall hereinafter be referred to as the “Premises.” The Premises include and Landlord hereby grants to Tenant (i) a right to access the Premises by existing or future roads, sidewalks or accessways as the same shall exist from time to time, (ii) a right to access the Premises by the common areas and entranceways identified in Exhibit 2.06; and (iii) all easement rights in favor of the Premises which are useful for the operation of the Parking Structure upon the Premises.

Section 2.02 Term. The term of this Lease (the “Term”) shall commence on the Commencement Date and shall expire on the twenty-fifth (25th) anniversary of the Commencement Date, unless earlier terminated as set forth herein.

Section 2.03 Covenants of Title and Quiet Enjoyment. Subject to the Permitted Exceptions set forth in the Development Agreement, Landlord represents and warrants to Tenant that Landlord, as of the Commencement Date, shall have and maintain good and marketable fee simple title to the Premises. Landlord covenants and agrees that so long as no Event of Default is continuing, Tenant shall have peaceful and quiet enjoyment of the Premises, subject to the Permitted Exceptions, as defined in the Development Agreement, during the Term.

Section 2.04 Development Agreement. Landlord and Tenant acknowledge that this Lease is being entered into pursuant to the terms and conditions of the Development Agreement. A default under the Development Agreement shall also be a default under this Lease, subject to the notice and cure periods under the Development Agreement and subject to the limitation of remedies set forth in the Development Agreement. Capitalized terms not otherwise defined in this Lease shall be defined as provided in the Development Agreement.

Section 2.05 Surrender of Premises. Upon the termination of this Lease, Tenant shall surrender the Premises to Landlord, including the Parking Structure Parcel and the Parking Structure, and all fixtures related thereto, unless the same are to be removed as expressly provided in this Lease, in good operating condition in compliance with Tenant's maintenance obligations, reasonable wear and tear and damage by casualty excluded, and subject to Landlord's maintenance obligations. Tenant shall remove, prior to such termination, all of its trade fixtures, equipment and personal property which are owned by and installed by Tenant. In the event that Tenant holds over under this Lease without Landlord's consent, Tenant shall be responsible for out-of-pocket costs and expenses incurred by Landlord as a result of such holdover. A nonconsensual holdover shall also be an Event of Default hereunder and Landlord shall be entitled to all remedies provided in this Lease.

Section 2.06 Common Areas. Landlord and Tenant hereby grant to one another and their agents, contractors, employees, licensees and invitees the reciprocal easement and right to utilize the common entranceways, driveways, walkways, entrances, stairways, elevators, landings and other common areas within the Parking Structure or the Mixed-Use Project, which are designed for public use and ingress and egress to and from the Parking Structure to the Mixed-Use Project and the public right of ways adjacent to the Mixed-Use Parcel and the Parking Structure Parcel, as specifically identified on Exhibit 2.06, attached hereto.

Section 2.07 Utilities. Landlord and Tenant hereby grant to one another the reciprocal easement and right to use such utility lines and facilities available at the Mixed-Use Parcel and the Parking Structure Parcel, including the right to connect to such utilities (subject to the rights of any thirty-party utility provider) as shown on the Parking Structure Plans and Specifications and the Mixed-Use Project Plans and Specifications.

ARTICLE 3 CONSTRUCTION

Section 3.01 Parking Structure Construction Obligations of Landlord. Landlord shall construct the Parking Structure upon the Parking Structure Parcel pursuant to the final plans and specifications for the Parking Structure, which are described on Exhibit 3.01, attached hereto and incorporated herein by reference ("Parking Structure Plans and Specifications"). Each of the plans and specifications listed on Exhibit 3.01 have been reviewed and approved by Tenant pursuant to the terms and conditions of the Development Agreement. Landlord shall construct the Parking Structure at Landlord's sole cost and expense. Construction of the Parking Structure shall include the site work, excavation and foundation and structural support necessary to support the Parking Structure, all as provided in the Development Agreement and reflected on the Parking Structure Plans and Specifications. Landlord's construction shall be in compliance with the Parking Structure Plans and Specifications unless a material modification to the Parking Structure Plans and Specifications is approved in writing by Tenant. For purposes of this Section 3.01, a material modification has a material impact on the structure, exterior appearance, interior configuration, common areas, accessways, driveways or parking spaces located within the Parking Structure, including but not limited to any change in the materials or methods used for construction.

Section 3.02 Mixed-Use Project Construction Obligations of Landlord. Landlord shall construct the Mixed-Use Project upon the Mixed-Use Parcel in material compliance with the final plans and specifications for the Mixed-Use Project, which are listed and described on **Exhibit 3.02**, attached hereto and incorporated herein by reference (“Mixed-Use Project Plans and Specifications”). Each of the plans and specifications listed on **Exhibit 3.02** have been reviewed and approved by Tenant pursuant to the terms and conditions of the Development Agreement. Landlord’s construction of the Mixed-Use Project shall be in material compliance with the Mixed-Use Project Plans and Specifications unless a material modification of the Mixed-Use Project Plans and Specifications is approved in writing by Tenant. For purposes of this Section 3.02, a material modification is any modification to the Mixed-Use Project which impacts the size of the residential component, the size of the retail component, the exterior appearance, or the materials or methods used for construction. Landlord shall construct the Mixed-Use Project at Landlord’s sole cost and expense.

Section 3.03 Parking Structure Construction Schedule. Promptly after the execution of this Lease, Landlord shall commence construction of the Parking Structure and shall continue construction in accordance with the schedule attached hereto as **Exhibit 3.03** and incorporated herein by reference. Subject to delays caused by Tenant and subject further to Permitted Delays, Landlord agrees that the Parking Structure will be substantially complete to allow Tenant to occupy and commence operations in the Parking Structure on or before _____, 20____, (“Parking Structure Substantial Completion Date”). For purposes of this Lease, “Parking Structure Substantial Completion” shall mean (i) the Parking Structure has been completed in material compliance with the Parking Structure Plans and Specifications so that the Parking Structure is immediately available for Tenant’s occupancy for Tenant’s intended use; (ii) Landlord’s Architect has issued an AIA Form G704-2000 Certificate of Substantial Completion with respect to the Parking Structure; (iii) a punch list of minor adjustments and unfinished items has been prepared by Landlord and approved by Tenant; and (iv) a certificate of occupancy or other required occupancy permits have been issued for the Parking Structure.

Section 3.04 Mixed-Use Project Construction Schedule. Landlord shall commence construction of the Mixed-Use Project and shall continue construction in accordance with the schedule attached hereto as **Exhibit 3.04**. Subject to delays caused by Tenant and subject further to Permitted Delays, Landlord agrees that the Parking Structure will be substantially complete, as hereafter defined, on or before _____, 20____ (“Mixed-Use Project Substantial Completion Date”). For purposes of this Lease, “Mixed-Use Project Substantial Completion” shall mean (i) the Mixed-Use Project has been completed in compliance with the Mixed-Use Project Plans and Specifications so that the Mixed-Use Project is immediately available for occupancy for the Mixed-Use Project’s intended uses as described on **Exhibit D** attached hereto; (ii) Landlord’s Architect has issued an AIA Form G704-2000 Certificate of Substantial Completion with respect to the Mixed-Use Project; and (iii) a certificate of occupancy or other required occupancy permits have been issued for the Mixed-Use Project.

Section 3.05 Construction Cooperation. The parties agree to cooperate and communicate with each other at all times during construction of the Parking Structure and the Mixed-Use Project. Each party acknowledges and agrees that as the Parking Structure and the Mixed-Use Project may be constructed simultaneously or may be constructed at different times, some amount of disruption to the activities of the Parking Structure and the Mixed-Use Project

may occur during the course of construction. Each party agrees to work with the other to minimize disruptions as much as possible and to accommodate such disruptions as are necessary during the course of construction. Tenant may designate certain portions of the substantially completed Parking Structure for staging construction of the Mixed-Use Project. Landlord shall indemnify and hold Tenant harmless from and against the cost of repair to, or any liability or damage arising from, Landlord's use of the staging area within the Parking Structure during construction.

ARTICLE 4 RENT AND EXPENSES

Section 4.01 Base Rent. Commencing upon the Commencement Date and continuing throughout the Term of this Lease, Tenant shall pay an annual base rent of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) payable in two semi-annual installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) on _____ and _____ of each calendar year during the Term. Tenant shall pay annual rent, inclusive of annual base rent and all other expenses of Tenant hereunder, first from the operating revenue of the Parking Structure and then from tax increment revenue generated by the Mixed-Use Project and the Parking Structure Parcel as pledged by the City of Fort Wayne Redevelopment Commission ("Project Generated Revenue") and, if necessary, other additional economic development income tax revenues pledged to Tenant by the Common Council of the City of Fort Wayne ("Other Revenues"). On or before April 15 of each calendar year during the Term of this Lease, Tenant shall provide Landlord with a written notice of the amount of Project Generated Revenue used to pay annual base rent and the amount of Other Revenues used to pay annual base rent for the previous calendar year. Annual base rent shall abate in full during any period in which Landlord has failed to pay in full when due the Real Estate Taxes and assessments payable with respect to the Parking Structure and, during the first three (3) years of the Term, Landlord has failed to pay in full when due the Real Estate Taxes and assessments payable with respect to the Mixed-Use Project. Landlord may audit Tenant's calculation of Project Generated Revenues identified in the written notice of the amount of Project Generated Revenues by providing a written notice of Landlord's intent to audit within sixty (60) days of Tenant's written notice of the amount of Project Generated Revenue. In the event Landlord fails to provide written notice of Landlord's intent to audit within sixty (60) days of Tenant's written notice of the amount of Project Generated Revenue, then Landlord shall be deemed to have waived the right to audit and the amount of Project Generated Revenue shall be deemed to be that set forth in Tenant's written notice of the amount of Project Generated Revenue. In the event of an audit by Landlord, Tenant shall make available its written evidence of the Project Generated Revenue at Tenant's business office for Landlord's inspection and review. In the event Landlord's audit establishes an understatement of Project Generated Revenue by an amount that exceeds five percent (5%) of the total, then Tenant shall reimburse Landlord for Landlord's reasonable costs incurred in conducting the audit. Otherwise, any audit conducted by Landlord shall be at Landlord's sole cost and expense. In the event Landlord's audit establishes an understatement of Project Generated Revenue of less than five percent (5%) or an overstatement of Project Generated Revenue, then the amount of Project Generated Revenue shall be revised to that amount shown in Landlord's audit, provided Tenant has approved Landlord's audit, which approval Tenant agrees shall not be unreasonably withheld, conditioned

or delayed. Annual base rent shall abate during any period in which the Parking Structure is not available for use by Tenant as more particularly set forth in this Lease. Annual base rent shall be prorated on a per diem basis for periods less than one (1) year. Tenant shall deposit Project Generated Revenue and Other Revenues into a special fund designated for the payment of rent due and payable pursuant to this Lease. Rent payments pursuant to this Lease are limited to the special fund so established pursuant to Indiana Code 36-7-14-25.2(f). The special fund shall consist of revenues pledged in accordance with Indiana Code 5-1-14-4 and subject to the provisions of Indiana Code 36-7-14-25.5.

Section 4.02 Past Due Payments. If any payment required to be made by a party shall not be paid when due, such unpaid amounts shall bear interest from the due date to the date of payment at the rate of ten percent (10%) per annum.

Section 4.03 Place of Payments. All payments required to be paid by Tenant to Landlord shall be delivered to Landlord at its address set forth in Article 15 hereof.

Section 4.04 Real Estate Taxes and Assessments. During the Term, Landlord shall timely pay, as and when due, all Real Estate Taxes, as defined below, assessments and other governmental charges, general and special, including assessments for public improvements and benefits, if any, which now or hereafter constitute a lien upon the Parking Structure Parcel and the Parking Structure. Tenant shall reimburse Landlord for the payment of Real Estate Taxes assessed against the Parking Structure Parcel and the Parking Structure within fifteen (15) days of a written notice of the payment by Landlord of the Real Estate Taxes assessed against the Parking Structure Parcel and the Parking Structure, including paid receipts for the payment of said Real Estate Taxes. Tenant shall be responsible for all other permits, fees, sales taxes and all governmental charges related to the operation (but not for the construction) of the Parking Structure. Landlord shall be responsible for all permits, fees, sales taxes and all governmental charges related to the construction and operation of the Mixed-Use Project upon the Mixed-Use Parcel. The parties hereto agree to cooperate with each other and to execute such documentation as is required to create separate tax parcels for the Parking Structure Parcel and the Mixed-Use Parcel.

Section 4.05 Utilities. Landlord shall be responsible for obtaining all original utility service connections necessary for the construction and operation of the Parking Structure on the Parking Structure Parcel. Thereafter, Tenant shall promptly pay when due all charges for any utility services furnished to the Parking Structure during the Term. Landlord shall be solely responsible for utility costs incurred during the construction of the Parking Structure. Landlord shall be solely responsible for all utility costs incurred by Landlord during construction of the Mixed-Use Project.

Section 4.06 General Provisions. Except as specifically set forth herein to the contrary, all monies payable pursuant to this Lease shall be paid without notice or demand and without relief from valuation and appraisal laws.

ARTICLE 5
USE OF PREMISES; ALTERATIONS AND IMPROVEMENTS

Section 5.01 Use of Premises. Tenant shall use the Premises solely for the purpose of operating the Parking Structure, for such ancillary uses as are incidental thereto and for no other purpose without the express written consent of Landlord, which consent Landlord agrees shall not be unreasonably withheld, conditioned, or delayed. Tenant shall not commit any waste upon the Premises or use the Premises in any manner inconsistent with the operation of the Parking Structure for its intended purpose. The Parking Structure shall not be used for any unlawful purpose, or in any manner creating any nuisance thereon. The Parking Structure shall be used in compliance with all Restrictions, as herein defined. Tenant shall comply in all respects with all laws, ordinances, rules and regulations applicable to Tenant's operation of the Parking Structure.

Section 5.02 Alterations and Improvements. Tenant may make Alterations to the Parking Structure, and may construct and install additional improvements, so long as (i) the Alterations do not constitute a material deviation from the original plan for the construction of the Parking Structure and are conducted in accordance with the general requirements of this Lease and the Development Agreement, (ii) work on the Alterations, once begun, shall be continued in a reasonable and diligent manner, subject to Permitted Delays, (iii) the Alterations do not materially and negatively affect the fair market value of the Parking Structure, and (iv) copies of preliminary plans shall be provided to Landlord before construction commences, and copies of as-built plans are provided promptly after the Alterations are completed. Otherwise, no Alterations shall be permitted without the prior written consent of Landlord. All Alterations proposed by Tenant shall, if permitted or approved, be at the sole cost and expense of Tenant.

Section 5.03 Restrictions on Use. Landlord and Tenant shall not use the Parking Structure Parcel or permit the Parking Structure Parcel to be used for any use which would violate applicable zoning and land use laws and regulations or which would violate any applicable private restrictions or covenants (the "Restrictions"). Each party agrees to discontinue any use which is not permitted by the Restrictions immediately upon notice from another party. Tenant shall agree not to use the Parking Structure Parcel in any way that would cause an increase in the amount of insurance premiums paid by Tenant with respect to the Parking Structure.

ARTICLE 6
MAINTENANCE

Section 6.01 Parking Structure Maintenance. Throughout the Term, Tenant, at Tenant's sole cost and expense, shall maintain, repair and replace the Parking Structure as required to keep the same in good condition and repair and in compliance with all applicable laws, rules, ordinances, orders and regulations of federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction, reasonable wear and tear and damage by casualty excluded, except as specifically set forth in this Lease. Without limiting the above, Tenant shall be responsible for all snow and ice removal, landscaping, and for the repair of all accessways, sidewalks, parking areas and related improvements located within the Parking Structure or on any adjacent public right-of-way (but excluding any obligation to maintain the

actual roadway pavement or adjacent shoulder for such public right-of-way), to the extent the same is not maintained by a governmental agency or body. Tenant shall promptly and diligently repair the Parking Structure, as required to maintain or comply with the requirements above, or to remedy all damage to all or any part of the Parking Structure which occurs at any time during the Term. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the Parking Structure before the event giving rise to the work, except as expressly provided to the contrary in this Lease. Except as specifically set forth in this Lease, Landlord shall not be required to furnish any services or facilities or to make any repairs or maintenance of any kind in or on the Premises. Landlord's election to perform any obligation of Tenant on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's default, and Tenant shall promptly reimburse, defend and indemnify Landlord against all liability, loss, cost and expense arising from it; provided, however, prior to performing any such obligation, Landlord shall first give written notice to Tenant and allow the applicable cure period to run as provided in this Lease. Notwithstanding anything contained in this Lease to the contrary, Landlord shall be responsible for the maintenance, repair and replacement of the foundation and structural supports of the Parking Structure, the structural walls within the Parking Structure and the structural walls of the roof deck on top of the Parking Structure, but not the roof deck itself. Notwithstanding anything contained in this Lease to the contrary, Landlord shall warranty the design, materials and workmanship used in the construction of the Parking Structure against defects for the benefit of Tenant for a period of one (1) year following the Commencement Date. Landlord shall make available to Tenant any and all construction guaranties and warranties of materials and workmanship obtained by Landlord in the course of constructing the Parking Structure in accordance with this Lease and shall, to the extent permitted by the terms and conditions of the guaranty or warranty, assign the benefits of the same to Tenant upon Tenant's written request.

ARTICLE 7 INSURANCE

Section 7.01 Insurance. Commencing on the Commencement Date and continuing throughout the Term, Tenant shall maintain policies of commercial general liability insurance listing Landlord and Landlord's lenders as additional insureds and, during all times that a party is performing construction activities upon the Parking Structure Parcel, that party shall cause its general contractor to maintain the construction insurance coverages, all as listed on **Exhibit 7.01** attached hereto and made a part hereof. After the completion of the Parking Structure, Tenant shall maintain the completed structure property casualty insurance coverages and the commercial general liability coverages set forth on **Exhibit 7.01** attached hereto and such additional coverage as Landlord may reasonably require from time to time so long as such coverage is customary for similar properties in the greater Fort Wayne, Indiana area at the time the same is requested. The insurance coverages required to be carried subject to this Section 7.01 shall be with companies, and in forms, amounts and limits and for such periods of time and subject to such deductibles, as is customary for projects of this kind, and shall insure the respective interests of the parties to this Lease. No insurance coverage shall be acceptable if the provider is rated less than "A- VIII" by A. M. Best & Co. or in the event such company is no longer providing such ratings, a similar rating as may be provided by a national rating company. Such insurance may be provided in umbrella policies covering more than one property. Certificates and renewals thereof covering

the risks to be insured against, bearing satisfactory evidence of payment of all premiums thereon, shall be delivered by each party to the other parties at least thirty (30) days prior to the date that such insurance is required pursuant to this Lease. At least thirty (30) calendar days prior to the expiration of any insurance coverage required to be provided hereunder, each party shall deliver to the each other party, evidence of the renewal or replacement of such insurance and appropriate evidence of payment of premiums therefor. All insurance coverages required to be carried hereunder shall:

- (a) include effective waivers by the insurer of all rights of subrogation against any named insured;
- (b) provide that no cancellation, non-renewal, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by the other parties of written notice thereof;
- (c) name the other parties as additional insureds, including Landlord's lenders;
- (d) be on a completed value, non-reporting form with no co-insurance requirement; and
- (e) if customary for similar projects in the greater Fort Wayne, Indiana area, include terrorist coverage.

Notwithstanding the terms and conditions of this Section 7.01 above, Tenant reserves the right to self-insure any of the coverages required to be carried by Tenant, provided Tenant gives Landlord and its lenders written notice of and a certificate of said self-insurance program applicable to the Parking Structure, and such program provides the same degree of coverage as otherwise contemplated by this Section 7.01.

Section 7.02 Waiver of Subrogation. The parties release, and shall cause their contractors to release, each other, and their respective authorized representatives, from any claims for damage to any person, or to the Premises, the Parking Structure and other Improvements in which the Premises are located, and to the fixtures, personal property, and equipment in the Premises that are caused by or result from risks insured against or which would be insured against under any fire and extended coverage insurance policies carried, or customarily carried, by the parties, or by the parties' contractors, at the time of the damage. Each party shall cause each insurance policy obtained by that party, or by that party's contractor, to provide that the insurance company waives all right of recovery by way of subrogation against the other parties in connection with any damage covered by any policy.

ARTICLE 8 CONDEMNATION AND CASUALTY

Section 8.01 Condemnation. If all of the Premises are taken for any public purpose, this Lease shall terminate when possession of the Premises are taken by the applicable condemning authority. In the event of a partial taking of a material portion of the Parking

Structure or a partial taking that results in a lack of practical access to the Parking Structure, Tenant shall have the right to terminate this Lease by notice to Landlord of such election not later than ninety (90) days from the date of such possession and, in the event of such election, this Lease shall terminate when possession of the Premises are taken by the applicable condemning authority. In the event of a partial taking that does not result in the termination of this Lease, this Lease shall terminate only as to that portion of the Premises taken as of the date possession is taken by the condemning authority and the rights and obligations of the parties hereunder shall otherwise continue to apply in full force and effect and (a) Tenant shall be entitled to all condemnation awards applicable to the leasehold interest in the Parking Structure Parcel so condemned; and (b) Landlord shall be entitled to all condemnation awards applicable to the fee simple interest in the Parking Structure Parcel so condemned. Each party agrees to give the other party prompt notice of any threatened or pending condemnation of any part of the Parking Structure Parcel, and each party having an interest in the subject of the condemnation shall have the right to participate in all proceedings and negotiations with respect thereto. For the purpose of this Article 8, a taking shall include a negotiated sale or lease and transfer of possession to a condemning authority under a bona fide threat of condemnation. In the event of a partial condemnation which results in a part of the Parking Structure being condemned, Landlord shall be responsible, at its cost and expense, to (i) remove such portion of the Parking Structure and restore the balance of the Parking Structure to the same condition existing as of the date immediately prior to the condemnation to a functional unit to the extent practicable; in the case of such restoration, Landlord shall be entitled to use the condemnation proceeds to restore the Parking Structure. If the Parking Structure or any portion thereof is taken temporarily, this Lease shall not terminate and the parties shall mutually agree upon an equitable sharing of any compensation paid by the condemnation authority. Rent shall abate in proportion to the amount of the Parking Structure which is not available to Tenant as a result of any condemnation.

Section 8.02 Casualty. If the Parking Structure or any portion thereof is partially or totally destroyed by fire or other casualty, then Landlord shall promptly commence with the reconstruction and repair of the Parking Structure and diligently pursue the same to completion, subject to delays caused by Tenant or Permitted Delays. Landlord shall be entitled to use the insurance proceeds to pay for the reconstruction and repair of the Parking Structure. Rent shall abate in proportion to the amount of the Parking Structure which is not available to Tenant as a result of any casualty.

ARTICLE 9 DEFAULTS AND REMEDIES

Section 9.01 Default. The occurrence of any one or more of the following events shall be deemed to be an "Event of Default" under this Lease: (a) the failure of Tenant to pay any installment of base rent on or before its due date and such failure has continued for three (3) business days following a written notice from Landlord to Tenant; (b) the failure of a party to pay any sum required to be paid under this Lease, other than Tenant's base rent, within ten (10) days after written notice of such failure from a party entitled to demand such payment, (c) the failure of a party to comply with any other covenant or provision of this Lease within thirty (30) days after written notice of such failure from a party entitled to demand such performance, provided if such failure is not susceptible of being cured within such thirty (30) day period, a

party shall have a reasonable period beyond such thirty (30) day period to effect such cure, so long as such party commences to cure such failure within such thirty (30) day period and diligently pursues the same to completion and any expenses incurred by the other party as a result of such failure are paid by the such party (d) an event of default by a party under the Development Agreement, subject to the applicable notice and cure periods therein.

Section 9.02 Remedies. When an Event of Default exists, subject to the rights and obligations of any Mortgagee set forth in Section 15.04 of this Lease, a non-defaulting party shall have the following remedies, which shall be its sole and exclusive remedies:

(a) following any Event of Default, the non-defaulting party may perform the covenant of the defaulting party which is in default (entering on the property of the defaulting party, if necessary) and recover the cost of such performance, including an oversight and administrative fee of fifteen percent (15%) of the cost of the work, from the defaulting party. The non-defaulting party's performance of such covenant shall neither subject the non-defaulting party to liability for any loss, inconvenience or damage to the defaulting party nor be construed as a waiver of the defaulting party's default or of any other right or remedy provided for herein respecting such default;

(b) with respect to a default in any payment due from a party under this Lease, the party entitled to said payment may bring suit for the collection of any amounts for which the defaulting party is in default; and/or

(c) following any Event of Default by a defaulting party, a non-defaulting party may exercise any other right or remedy at law or in equity, including the right to enjoin the failure to perform, or specifically enforce the performance of, any covenants with respect to which the defaulting party is in default under this Lease.

Interest on any amounts incurred by a non-defaulting party with respect to the cure of an Event of Default hereunder shall bear interest at the rate of ten percent (10%) per annum.

Section 9.03 Attorney Fees. In the event of any dispute between the parties regarding this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with such dispute. For purposes of this Lease, 'prevailing party' shall include, but not be limited to, a party obtaining substantially the relief sought, whether by award of a judgment by a court of competent jurisdiction, compromise, settlement, or otherwise.

ARTICLE 10 ASSIGNMENT AND SUBLETTING

Section 10.01 Assignment and Subletting. Except as permitted in Section 10.02 and 10.03 below, Tenant may not assign or otherwise transfer this Lease, or any interest therein, without the prior written consent of Landlord, which consent Landlord may withhold in Landlord's sole and exclusive discretion. Any transfer by operation of law or other transfer or assignment, or a series thereof, which are designed to assign the economic interest of the Tenant's rights under this Lease, shall be deemed to be an assignment and shall require

Landlord's approval. Tenant may, without Landlord's consent, assign and sublease the Premises as provided in Section 10.02 and 10.03 below.

Section 10.02 Permitted Subleases. Tenant shall have the absolute and exclusive right to manage and operate the Parking Structure and shall have the unfettered right to enter into third-party subleases and parking space licenses and agreements for all or a part of the Premises, and may enter into management contracts, operating agreements and equipment leasing agreements in order to operate the Parking Structure as provided pursuant to this Lease, without Landlord's consent provided. Tenant shall provide Landlord with a written notice of all management contracts, operating agreements and equipment leasing agreements promptly upon execution.

Section 10.03 Permitted Assignments. Tenant shall be permitted to assign this Lease without the consent of Landlord (i) to another governmental agency or political subdivision for the purpose of financing or refinancing its interest in this Lease or its investment in improvements or alterations to the Premises, or (ii) to an entity acquiring all or any portion of Tenant's parking facilities located in the City of Fort Wayne, Indiana, provided, however, that Tenant shall remain liable to Landlord for the payment of annual base rent.

Section 10.04 Permitted Landlord Assignment. Landlord may assign its interest in this Lease in conjunction with the conveyance of Landlord's title to the Parking Structure Parcel, provided (a) Landlord provides written notice to Tenant at least thirty (30) days prior to the conveyance, and (b) the proposed assignee agrees in writing to assume all of the obligations of Landlord to Tenant pursuant to this Lease.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Section 11.01 Representations and Warranties of Landlord. Landlord represents and warrants to Tenant as of the Effective Date that:

- (a) Landlord has all requisite power and authority to execute and deliver this Lease and all other documents required to be executed and delivered by it pursuant hereto;
- (b) This Lease will not violate any statute, ordinance, governmental restriction, regulation or any private restriction or agreement applicable to Landlord;
- (c) Landlord has not entered into any contract, agreement or option, other than this Lease granting to any party the right to purchase, lease or sublease the Premises;
- (d) Landlord has received no written notice of any administrative agency action, litigation, condemnation or other proceeding of any kind pending or threatened that relates to the Premises; and
- (e) All of the representations and warranties of Landlord contained in the Development Agreement remains true as of the Effective Date.

Section 11.02 Representations and Warranties of Tenant. Tenant represents and warrants to Landlord as of the Effective Date that:

(a) Tenant has all requisite power and authority to execute and deliver this Lease and all other documents required to be executed and delivered by Tenant pursuant hereto;

(b) This Lease will not violate any statute, ordinance, governmental restriction, regulation or any private restriction or agreement applicable to Tenant; and

(c) All of the representations and warranties of Tenant contained in the Development Agreement remain true as of the Effective Date.

ARTICLE 12 HAZARDOUS MATERIALS

Section 12.01 Environmental Obligations. No party to this Lease shall store, use, generate, manufacture, dispose, or release any Hazardous Materials on the Parking Structure Parcel, except that a party may store and use Hazardous Materials in nominal amounts as is reasonable, necessary and customary for the uses described herein for the Parking Structure, so long as such storage and use are in compliance with all applicable laws, rulings, regulations, ordinances and other governmental directives.

Section 12.02 Tenant's Indemnification. Tenant shall be responsible for and shall indemnify and defend Landlord from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, reasonable attorneys' fees) which are brought or recoverable against, or suffered or incurred by Landlord or any party related thereto as a result of (i) any storage, use, generation, transport, manufacture, disposal or release of any Hazardous Materials by Tenant upon the Parking Structure Parcel (including Tenant's agents, employees or contractors), or (ii) which otherwise arise as a result of the operation of the Parking Structure by Tenant, except to the extent caused by the gross negligence or intentional misconduct of Landlord, its employees, agents or contractors. The obligations of Tenant under this Section 12.02 shall survive the expiration or any termination of this Lease.

Section 12.03 Landlord's Indemnification. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, reasonable attorneys' fees) which are brought or recoverable against, or suffered or incurred by Tenant as a result of any release of Hazardous Materials upon the Parking Structure Parcel to the extent caused by gross negligence or intentional misconduct of Landlord or its agents, employees or contractors. The obligations of Landlord under this Section 12.03 shall survive the expiration or any termination of this Lease.

ARTICLE 13
LANDLORD PARKING RIGHTS AND OBLIGATIONS

Section 13.01 Landlord Parking Rights. From and after the date Landlord receives a certificate of occupancy permitting Tenant to operate the Parking Structure, Landlord shall have the right to use a maximum of two hundred twenty-five (225) parking spaces in the Parking Structure, solely in conjunction with the Mixed-Use Project, twenty-four (24) hours a day, seven (7) days a week. The Landlord parking spaces shall be in the areas shown on **Exhibit 13.01**. From and after the date Tenant receives a certificate of occupancy to operate the Parking Structure, Landlord shall pay a monthly rent to Tenant for each parking space used in the amount of Sixty-Five and No/100 Dollars (\$65.00) per space. The monthly rent to be paid by Landlord to Tenant may be raised once annually by written notice from Tenant to Landlord, provided the monthly rent may not be raised by more than three percent (3%) per annum. Landlord shall provide written notice to Tenant, on or before the fifteenth (15th) day of each month during the Term of this Lease, of the number of parking spaces that Landlord will use during the following month, which number shall not be less than thirty (30). Landlord shall pay monthly rent for the spaces set forth in Landlord's notice and any spaces not used by Landlord may be used by Tenant during the following month. Landlord agrees that the parking spaces shall be used in compliance with the reasonable rules and regulations for use of the Parking Structure established by Tenant from time to time during the Term of this Lease. Landlord further agrees that Tenant may require each user of the parking spaces to sign a parking agreement agreeing to comply with said rules and regulations. The parking spaces may be used by Landlord and Landlord's successors and assigns with respect to the Mixed-Use Parcel for their apartment tenants, retail tenants, employees, agents, contractors, licensees and invitees.

Notwithstanding anything contained herein to the contrary, the rights and obligations of Landlord contained in this Article 13 shall not be personal to Landlord, but shall be rights and responsibilities that run with the title to the Mixed Use Parcel.

ARTICLE 14
OTHER SENIOR PARKING RIGHTS

Section 14.01 Allen County, Indiana. Tenant and Landlord acknowledge and agree that their interest in and to the Parking Structure is subject and subordinate to the rights of Allen County, Indiana, to park within the Parking Structure pursuant to a parking agreement entered into by Tenant and Allen County, Indiana. Tenant acknowledges and agrees that the rights granted to Allen County, Indiana, do not conflict with the rights granted to Landlord in Section 13.01 above.

Section 14.02 Superior Lofts, LLC. Tenant and Landlord acknowledge and agree that their interest in and to the Parking Structure is subject and subordinate to the rights of Superior Lofts, LLC, to park within the Parking Structure pursuant to a parking agreement entered into by Tenant and Superior Lofts, LLC. Tenant acknowledges and agrees that the rights granted to Superior Lofts, LLC, do not conflict with the rights granted to Landlord in Section 13.01 above.

Section 14.03 Houndstooth Territory Group, Inc. Tenant and Landlord acknowledge and agree that their interest in and to the Parking Structure is subject and subordinate to the rights of

Houndstooth Territory Group, Inc. to park within the Parking Structure pursuant to a Right of Entry Agreement dated November 29, 2007, with the Tenant. Tenant acknowledges and agrees that the rights granted to Houndstooth Territory Group, Inc. do not conflict with the rights granted to Landlord in Section 13.01 above.

Section 14.04 Nondisturbance. Tenant and Landlord acknowledge and agree that nothing in this Lease shall disturb Allen County, Indiana, in the exercise of its rights pursuant to Section 14.01 above, Superior Lofts, LLC in the exercise of its rights pursuant to Section 14.02 above, or Houndstooth Territory Group, Inc. in the exercise of its rights pursuant to Section 14.03 above. .

ARTICLE 15 MISCELLANEOUS

Section 15.01 Permitted Delays. Whenever performance is required of any party hereto, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar cause beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances (“Permitted Delays”, and in the singular form, each a “Permitted Delay”). If (i) there should arise any Permitted Delay for which Landlord or Tenant are entitled to delay its performance under this Agreement, and (ii) Landlord or Tenant anticipates that the Permitted Delay will cause a delay in its performance under this Agreement, then Landlord or Tenant, as the case may be, agree to provide written notice to the other party of the nature and the anticipated length of such delay.

Section 15.02 Memorandum of Parking Structure Lease. Landlord and Tenant shall execute and deliver a short-form or memorandum of lease in recordable form so as to give public notice of the existence of this Lease. Such memorandum of lease shall be in the form of Memorandum of Parking Structure Lease attached hereto as Exhibit 15.02.

Section 15.03 Real Estate Commissions. The parties each represent that they have not dealt with any broker in connection with this Lease and agree to indemnify each other from any loss, damage or claim arising from a breach of such representation.

Section 15.04 Subordination, Nondisturbance and Attornment. Tenant agrees that subject to the terms of this Section 15.04, this Lease is and all of Tenant’s rights hereunder are and shall always be subject and subordinate to any mortgages, deeds of trust or security instruments (“Mortgage”) that may now exist or may hereafter be placed upon the Parking Structure Parcel or the Parking Structure, or any part thereof, and to any and all advances made or to be made thereunder and to the interest thereon and all renewals, replacements, modifications, consolidations or extensions thereof as granted by Landlord. If the holder of any such Mortgage (“Mortgagee”) or if the purchaser of any foreclosure sale or any sale under a power of sale contained in any Mortgage (“Purchaser”), at its sole option, so requests, Tenant will attorn to and recognize the Mortgagee or Purchaser as Landlord under this Lease, subject to

the terms and conditions of this Lease. Such subordination and attornment is forever expressly conditioned upon the Mortgagee or Purchaser assuming in writing the obligations of Landlord under this Lease and agreeing that Tenant's rights under this Lease shall not be disturbed in any manner whatsoever, so long as Tenant remains in compliance with the terms and conditions of this Lease. The terms and provisions of this Section 15.04 shall be self-operative and no further instrument or document shall be necessary unless requested by Tenant, Mortgagee or Purchaser. Neither the Mortgagee nor the Purchaser shall be bound by any termination, amendment, modification or surrender of the Lease without such Mortgagee or Purchaser's written consent. Neither the Mortgagee nor the Purchaser shall be bound by any advance payment of rent more than the current rent due at any time during the Term of this Lease. Neither the Mortgagee nor the Purchaser shall be liable for any damages or subject to any offset or defense by Tenant as a result of the acts of a prior Landlord. Tenant shall, upon written request of said Mortgagee or Purchaser, execute all instruments and/or documents that may be reasonably requested to acknowledge the subordination, nondisturbance and attornment described in this Section 15.04. Notwithstanding anything to the contrary set forth above, any Mortgagee may, at any time, subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant. In the event a Mortgagee or Purchaser shall fail to uphold and comply with the provisions of this Section 15.04, then this Lease shall automatically be superior to the interests of such Mortgagee or Purchaser.

Section 15.05 Notices. All notices permitted or required to be given by any party hereunder shall be deemed to have been fully given when made in writing and delivered in person or by nationally recognized overnight courier or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

If to Landlord: Riverview FW, LLC
c/o Continental Property Group LLC
Attn: Traci Tomas, President
1907 Wayzata Boulevard, Suite 250
Wayzata, MN 55391
Telephone: 952-746-4137
Facsimile: 952-473-2700
Email: ttomas@continentalpropertygroup.com

With a copy to: Thomas B. Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
Telephone: 260-422-9454
Facsimile: 260-422-1622
Email: ttrent@rlwlawfirm.com

If to Tenant: The City of Fort Wayne, Indiana
Department of Redevelopment
Attn: Executive Director
Citizen's Square
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
Telephone: 260-427-2323
Facsimile: 260-427-1375
Email: nancy.townsend@cityoffortwayne.org

With a copy to: The City of Fort Wayne, Indiana
Attention: Lawrence E. Shine
Citizen's Square
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Telephone: 260-427-1190
Facsimile: 260-427-5678
Email: lawrence.shine@cityoffortwayne.org

With a copy to: Jon A. Bomberger
Faegre Baker Daniels LLP
110 W. Berry Street, Suite 2400
Fort Wayne, IN 46802
Telephone: 260-460-1658
Facsimile: 260-460-1700
Email: jon.bomberger@faegrebd.com

All such notices shall be deemed to be received upon delivery in person or by overnight courier or on the third (3rd) day after mailing. Either party may change its address for notice by written notice given in accordance herewith.

Section 15.06 Construction and Interpretation. The captions of each article and section hereof are added as a matter of convenience only and shall be considered to be of no effect in the construction or interpretation of any provision or provisions of this Lease. The terms of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. This Lease shall be interpreted and its provisions shall be applied in accordance with the laws of the State of Indiana. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease shall not be affected thereby, and each term, covenant, or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. This Lease and the Development Agreement contain the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements regarding the subject matter hereof. This Lease may be amended and modified only in a writing signed by the Landlord and Tenant. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and the terms and provisions of this instrument shall be construed accordingly. All provisions hereof

which by their nature would be expected to survive the termination or expiration of this Lease shall so survive.

Section 15.07 Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but not one in the same instrument.

Section 15.08 Rights of Inspection. Each party shall have the right at all reasonable times, upon reasonable prior notice and in conformity with reasonable security procedures, to go upon and inspect another party's construction and operations to determine that the same is in compliance with the terms and conditions of this Lease or to inspect and obtain information necessary for that party's construction or operations upon the Riverview Parcel.

Section 15.09 Mechanic's Liens. The parties will not permit any mechanic's lien or liens to be filed against the Riverview Parcel at any time for any work done for or materials furnished to a party; provided that a party may contest such lien or liens in good faith if a party (a) deposits as required by law a sufficient surety bond or other security to obtain a release of the lien or liens and (b) obtains a court order releasing the lien or liens. If any such lien or liens are filed, then the party against whom the lien is filed shall cause the same to be removed within forty-five (45) days of the date of filing.

Section 15.10 Coordination with Development Agreement. This Lease and the Development Agreement shall be read and interpreted, to the extent possible, to give full meaning to each document and to avoid any conflict between the two. However, in the event that there is a direct conflict between the terms of the two documents, this Lease shall control.

Section 15.11 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate, as well as the fee estate in the Premises or any interest in such fee estate.

Section 15.12 Estoppel Certificates. Any party shall, without charge, at any time and from time to time hereafter, within fifteen (15) days after the written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee, subtenant or assignee of Tenant or proposed mortgagee, subtenant or assignee of Tenant or to any purchaser from, or lender to, Landlord or any proposed purchaser from, or lender to, Landlord or any other person, firm or corporation specified in such request: (1) that this Lease is in full force and effect and unmodified or, if modified, stating the date of modification and the terms thereof; (2) that the rent and other sums due and payable by the parties are paid currently without any offset or defense thereto, or stating any delinquency and offsets or defenses claimed by Tenant or Landlord, as the case may be, and known at the time of such statement, (3) the amount of rent and any other sums due and payable, if any, paid in advance, and (4) that there is no uncured Event of Default or default by Landlord or Tenant, as the case may be, and knowledge qualified with respect to defaults by the non-certifying party, or stating those claimed by either Landlord or Tenant, so long as the same are ascertainable, it being intended that any such instrument delivered pursuant to this Section 15.12 may be relied upon by any existing or prospective

Mortgagee, assignee or subtenant of Tenant or purchaser or lender, or prospective purchaser from or lender to, Landlord.

Section 15.13 Waivers. No waiver of any condition or covenant in this lease by either party shall be deemed to imply or constitute a future waiver of the same or any other condition or covenant of this Lease. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and in addition to every other right or remedy now or hereafter existing at law, in equity, or by statute, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises. No delay or omission to exercise any right or power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein.

Section 15.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership, joint venture, or any relationship between the parties hereto other than that of Landlord and Tenant.

Section 15.15 Consent. Whenever it is necessary under the terms of this Lease for either party to obtain the consent or approval of the other party, except as expressly specified herein to the contrary, such consent or approval shall not be unreasonably withheld, conditioned or delayed. In the event that either party objects to the withholding of consent or approval by the other party, the objecting party shall be limited to the remedies of specific enforcement or an injunction to enforce the withholding party's obligation to consent, so long as the withholding party is not acting maliciously or in bad faith. The parties hereby waive any claims for monetary damages as a result of a party's wrongful withholding or delay in giving consent, so long as the party whose consent is required is not acting maliciously or in bad faith. Unless a different time period is specifically provided for in the Lease, any consent which is not provided within thirty (30) days of the date the request for the same is received, unless such delay is due in whole or in part to requesting party's acts or omissions, shall be deemed to have been given.

Section 15.16 Successors or Assigns. Except as otherwise specified in this Lease, all of the provisions contained in this Lease shall run with the land and bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors and assigns. Any references in this Lease to Landlord and Tenant shall be deemed to include their respective heirs, successors and assigns.

Section 15.17 Disputes. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other or any work to be performed by either of them under the provisions hereof, the party against whom the obligation to pay or to perform is asserted shall have the right to make payment or perform such work and pay the cost thereof "under protest," and such payment or performance, so long as specifically identified, in writing, as "under protest," shall not be regarded as a voluntary payment or performance and the right of said party to institute suit to recover the amount paid "under protest" shall survive. If it shall be adjudged or mutually agreed by Landlord and Tenant that there was no legal obligation on the part of said party to pay such sum or any part thereof or that said party was not legally obligated to perform,

said party shall be entitled to recover the amount paid “under protest” or so much thereof as it was not legally required to pay under the provisions of this Lease.

Section 15.18 Interest Rate. Except where a different rate of interest is expressly provided for elsewhere in this Lease, whenever any interest is payable by Tenant to Landlord or Landlord to Tenant under this Lease, such interest shall be paid at an annual rate equal to six percent (6%).

ARTICLE 16 OPTION TO PURCHASE

Section 16.01 Definitions. Certain terms used in this Article 16 are defined in this Section 16.01; other terms are defined within the text of this Lease.

(a) “Closing” shall mean the consummation of the purchase and sale of the Premises in accordance with the terms of this Lease upon exercising the option and completion of all conditions precedent herein required to the satisfaction of Tenant.

(b) “Option Period” shall mean the time period beginning five hundred forty (540) days prior to the expiration of the Term, and ending four hundred fifty (450) days prior to the expiration of the Term.

(c) “Purchase Price” shall mean the Purchase Price for the Premises determined in accordance with Section 16.03 of this Lease.

(d) “Title Commitment” shall mean the Commitment issued by an ALTA approved title insurance company (“Title Company”) approved by Tenant in which the title insurance company commits itself to issue to Tenant an Owner’s Policy of Title Insurance upon demand, with its general exceptions deleted, in the full amount of the Purchase Price, setting forth the state of the title to the Premises and subject only to those “permitted exceptions” hereinafter described.

Section 16.02 Option to Purchase. Landlord hereby grants, bargains and sells to Tenant the exclusive option to purchase the Premises (“Option to Purchase”). The Option to Purchase shall expire unless initially exercised during the Option Period. Tenant may initially exercise and thereafter confirm the Option by giving notice to Landlord as provided in the Lease. Notice shall be deemed to have been given if in writing and made in such manner provided for the giving of notices specified in this Lease. In the event of exercise, Landlord shall sell to Tenant and Tenant shall purchase from Landlord the Premises in accordance with the terms and conditions hereinafter set forth.

Section 16.03 Purchase Price for Premises. The Purchase Price for the Premises shall be the fair market value of the Premises on the date that Tenant initially exercises the Option to Purchase. The fair market value of the Premises shall be determined promptly after the initial exercise of the Option to Purchase. Landlord and Tenant shall first attempt to agree upon the fair market value of the Premises for a period of sixty (60) days from the date of Tenant’s exercise of the Option to Purchase. In the event that Landlord and Tenant are unable to agree upon the fair

market value of the Premises, then the fair market value of the Premises shall be determined by an appraisal prepared by an MAI designated member of the Appraisal Institute with at least ten (10) years' experience in commercial appraisals in the Fort Wayne, Indiana area ("Qualified Appraiser"). Tenant shall nominate a Qualified Appraiser to conduct the appraisal. The Qualified Appraiser nominated by Tenant shall be subject to Landlord's approval, which approval Landlord agrees shall not be unreasonably withheld, conditioned or delayed. The Qualified Appraiser nominated by Tenant and approved by Landlord shall perform an appraisal to determine the fair market value of the Parking Structure, which shall be binding upon Tenant and Landlord. Tenant and Landlord shall share equally the cost of the appraisal. Tenant shall then confirm the exercise of the Option to Purchase no later than three hundred (300) days from the date of expiration of the Term ("Confirmation Notice"). In the event that Tenant fails to send the Confirmation Notice, the Option to Purchase shall be deemed terminated and Tenant shall surrender the Premises to Landlord upon the expiration of the Term. The Purchase Price subject to such adjustments, credits, deductions and prorations, if any, as herein required, shall be paid in cash at Closing. Tenant shall receive a credit against the Purchase Price at Closing for (a) the cost of any maintenance obligation of Landlord which exists as of the date of Tenant's initial exercise of the Option to Purchase and (b) the aggregate amount of Other Revenues used to pay annual rent throughout the Term as reported in compliance with Section 4.01.

Section 16.04 Survey of Premises. Upon Tenant's initial exercise of the Option to Purchase, Tenant shall order and procure a boundary survey of the Premises with all easements (including utility easements), available utility services, encroachments, rights-of-way and other matters (whether or not of record) pertaining to or affecting the Premises plotted thereon, and showing the location, area and dimensions of all improvements, easements, streets, roads, railroad spurs, flood hazard areas and alleys on or abutting said Premises, and providing a legal description of the Premises ("Survey"). Such survey shall be dated or re-dated at a date not more than thirty (30) days prior to the Closing, and unless otherwise approved by Tenant, shall (a) be made in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," established and adopted jointly by the American Land Title Association and the National Society of Professional Surveyors in 2016, and (b) contain such additional items from Table A as requested by Tenant.

Section 16.05 Title to Premises.

(a) State of Title to be Conveyed. At the Closing, Landlord shall convey to Tenant, its nominees, successors or assigns, by general Warranty Deed, good and merchantable and insurable fee simple title to the Premises, free from all liens, encumbrances, restrictions, rights-of-way and other matters, excepting only the "permitted exceptions" described as follows: (i) the lien of general real estate taxes not yet due and payable, subject to proration of taxes as hereinafter provided; (ii) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Landlord at or prior to the Closing; (iii) the Permitted Exceptions described in the Development Agreement; (iv) matters affecting title which were caused or suffered by Tenant during the Term; and (v) zoning ordinances and easements of record, if any, which have been approved by Tenant and which do not prevent or materially interfere with Tenant's intended use of the Premises.

(b) Title Insurance Commitment and Policy. Upon Tenant's initial exercise of the Option to Purchase, Landlord shall order and procure the Title Commitment, at the expense and for the account of Landlord. At the Closing, a Policy of Title Insurance or an endorsement to the Title Commitment shall be issued to Tenant insuring Tenant's fee simple interest in the Premises in the state required by Section 16.05(a) above, with all general exceptions deleted, and subject only to the "permitted exceptions". Said policy shall contain such endorsements as Tenant may, in Tenant's sole discretion, deem necessary. Landlord shall pay for, or Tenant shall receive a credit therefor at the Closing, all charges and costs of such Title Insurance Policy.

(c) Objections to State of Title. If title to the Premises is not in the state required by Section 16.05(a) above, Tenant shall give written notice to Landlord within thirty (30) business days after the date it receives the Title Commitment and survey, specifying its objection(s) to the state of title to the Premises. Landlord shall thereupon have a period of thirty (30) days in which it shall use its best efforts to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Tenant insuring over or removing such objection(s). If Tenant's objection(s) to the state of title to the Premises are not remedied by Landlord within such thirty (30) day period, or such further period as Tenant may, in its sole discretion, grant, then Tenant shall have the right, within thirty (30) days thereafter, to give written notice to Landlord that Tenant waives such title defects or objections and elects to proceed to acquire the Premises without any abatement of the Purchase Price and to take title to the Premises subject to such defects or objections; otherwise, this Lease shall be automatically cancelled and rescinded.

Section 16.06 Conditions to Closing. Tenant and Landlord agree that the sale and purchase of the Premises is subject to the satisfaction of the following contingencies and conditions within ninety (90) days of Tenant's initial exercise of the Option to Purchase, and if not so satisfied this Lease shall, at the option of Tenant, be cancelled and rescinded. Notwithstanding the foregoing, Tenant may, at its option, waive any of the conditions or contingencies set forth in this Section 16.06 and proceed to purchase the Premises from Landlord.

(a) That all warranties, representations and covenants given by Landlord herein, or in any document, instrument or exhibit to be given or furnished by Landlord, shall be true and correct and not have been breached on and as of the date of Closing as if made on that date.

(b) That Tenant shall have completed to Tenant's sole satisfaction any environmental audits, inspections or tests as Tenant may so elect to perform or cause to be performed. To the extent that any such environmental audits, inspections or tests disclose the existence upon the Premises of any Hazardous Material as defined in Section 12.01 of this Lease, then Tenant may, if it so elects, notify Landlord of the failure to satisfy the conditions to closing herein set forth.

(c) That subject to the maintenance obligations of the parties to this Lease, the Premises and all buildings and improvements located thereon, if any, will at Closing be in the same state of condition and repair as of the date of exercise of the Option to Purchase.

(d) That Tenant shall have approved the form and content of the Title Commitment and Survey, and the title to the Premises shall have remained in the state reflected by the Title Commitment, as approved by Tenant, through the date of the Closing.

(e) That Tenant shall have approved the form and content of the deed conveying the Premises to Tenant, the vendor's affidavit, the non-foreign certificate, the closing statement covering the purchase and sale of the Premises, and all other documents and instruments required to effect the sale of the Premises and the agreements of the parties herein set forth; and Landlord agrees to prepare such documents and instruments promptly upon notification by Tenant that all conditions precedent above set forth have been performed or waived. Landlord shall also furnish to Tenant such proof of authority as requested by Tenant or the Title Company authorizing Landlord to enter into and consummate this transaction.

(f) That Landlord and Tenant have executed a parking lease that preserves Landlord's right to park within the Parking Structure under the terms set out in Article 13 of this Lease, which parking lease Tenant shall prepare for Landlord's approval, which approval Landlord agrees shall not be unreasonably withheld, conditioned or delayed.

(g) That Landlord and Tenant have executed a reciprocal easement agreement establishing and preserving as a matter of record the easement rights of Landlord and Tenant as set forth in Sections 2.06 and 2.07 of this Lease. Tenant shall prepare the reciprocal easement agreement for Landlord's approval, which approval Landlord agrees shall not be unreasonably withheld, conditioned or delayed.

Section 16.07 Proration of Real Estate Taxes. Landlord shall pay all real property taxes and any general and/or special assessments which are due and payable, if any, on or before the date of the Closing, or which otherwise constitute a lien upon the Premises as of the date of the Closing. Current taxes, if any, shall be equitably prorated through the date of the Closing on the basis of the latest available tax bills covering the Premises. If, at the Closing, the Premises or any part thereof shall be subject to any assessment(s) which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this Lease all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed to the Premises, shall be deemed to be due and payable at the Closing and to be liens upon the Premises and shall be paid and discharged by the Landlord at or prior to the Closing.

Section 16.08 Closing.

(a) Provided all conditions set forth in Section 16.06 hereof or elsewhere herein have been satisfied or waived, within the time period therein required, the Closing shall take place within ten (10) days after the end of the Term, unless extended in writing

by mutual agreement of the parties hereto. The Closing shall occur at the offices of Title Company, or at such other place as agreed by Tenant and Landlord. Tenant and Landlord agree to deposit with Title Company not later than the date of the Closing all executed documents required in connection with this transaction, including such documents as requested by the Title Company issuing the Title Policy. Upon receipt of all necessary documents, and when the Title Company is in a position to issue to Tenant a Policy of Title Insurance, Title Company shall on the date of the Closing, upon instructions from Tenant and Landlord, cause the deed to the Premises and any other necessary or appropriate instruments to be filed for record. In the event all the conditions precedent to be performed by Landlord have not been satisfied within ninety (90) days of the date Tenant exercises the Option to Purchase, this Lease may be cancelled, at the option of Tenant, without obligation or liability to Landlord.

(b) Landlord and Tenant hereby agree that each shall be liable for and shall pay for: (i) one-half (1/2) of the cost of the preparation of the Survey; (ii) one-half (1/2) of the cost of the issuance of the Title Commitment; (iii) one-half (1/2) of the cost of the premium charged for the issuance of said ALTA owner's title policy issued pursuant to said commitment, and (iv) attorneys, brokerage, engineering and other professional fees incurred by said party. Each party shall be responsible for its other costs and expenses in accordance with the obligations or conditions to be performed by each respective party hereto. At the time of Closing, Landlord and Tenant shall execute and deliver a closing statement setting forth said Purchase Price, with such closing adjustments thereto as may be applicable.

[Signature Pages Follow]

IN WITNESS WHEREOF, Landlord, Tenant and Subtenant have executed this Lease as of the Effective Date.

“LANDLORD”

RIVERVIEW FW LLC,
a Minnesota limited liability company

By: _____

Printed: _____

Its: _____

“TENANT”

CITY OF FORT WAYNE, INDIANA,
REDEVELOPMENT AUTHORITY

By: _____

Printed: _____

Its: _____

“SUBTENANT”

CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT

By: _____

Printed: _____

Its: _____

EXHIBIT A

Legal Description of the Riverview Parcel

EXHIBIT B

Description of the Parking Structure

EXHIBIT C

Legal Description of Parking Structure Parcel

EXHIBIT C

EXHIBIT D

Description of the Mixed-Use Project

EXHIBIT E

Legal Description of the Mixed-Use Project

EXHIBIT 2.06

Parking Structure and Mixed-Use Project
Common Areas

EXHIBIT 2.06

EXHIBIT 3.01

Parking Structure Plans and Specifications

EXHIBIT 3.02

Mixed-Use Project Plans and Specifications

EXHIBIT 3.02

EXHIBIT 3.03

Parking Structure Construction Schedule

EXHIBIT 3.03

EXHIBIT 3.04

Mixed-Use Project Construction Schedule

EXHIBIT 3.04

EXHIBIT 7.01

Insurance

Landlord's Insurance Requirements During Construction: None.

Landlord's Commercial General Liability Insurance Requirements: None.

Landlord's Property and Casualty Insurance Requirements: None.

Tenant's Insurance Requirements During Construction:

Tenant's Commercial General Liability Insurance Requirements:

Tenant's Property and Casualty Insurance Requirements:

EXHIBIT 13.01

Landlord Parking Spaces

EXHIBIT 13.01

EXHIBIT 15.02

Memorandum of Parking Structure Lease

MEMORANDUM OF PARKING STRUCTURE LEASE

THIS MEMORANDUM OF PARKING STRUCTURE LEASE is entered into by and between the parties hereto to evidence the existence of a Parking Structure Lease dated _____, 2018 (the "Lease"), made by the CITY OF FORT WAYNE, INDIANA, REDEVELOPMENT AUTHORITY ("Tenant"), the CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT ("Subtenant") and RIVERVIEW FW LLC, a Minnesota limited liability company ("Landlord").

1. The real property subject to the Lease is located in Allen County, Indiana, and is more particularly described by the legal descriptions set forth on Exhibit "A", attached hereto and made a part hereof, and identified as the Legal Description of the Parking Structure Parcel and the Legal Description of the Mixed-Use Parcel.
2. The Term commenced _____, and shall now expire, unless sooner terminated, at 11:59 p.m. EST, on the date which is twenty-five (25) years thereafter.
3. Pursuant to the terms of the Lease, Landlord has granted to Tenant an option to purchase the leased premises. The option may be exercised in accordance with the term and provisions of the Lease.
4. Pursuant to the terms of the Lease, Tenant has granted to Landlord certain parking rights upon the Parking Structure Parcel in favor of the Mixed-Use Parcel. The parking rights may be exercised in accordance with the terms and conditions of the Lease.
5. The Lease is binding upon and inures to the benefit of Landlord, Tenant, Subtenant and their respective heirs, legal representatives, administrators, successors and assigns.
6. All other terms, covenants and agreements as set forth in the Lease, an executed counterpart of which is in the possession of each party thereto, are incorporated herein by reference hereto and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Parking Structure Lease, this ____ day of _____, _____

**THE CITY OF FORT WAYNE, INDIANA,
REDEVELOPMENT AUTHORITY**

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of the City of Fort Wayne, Indiana, Redevelopment Authority, who, being first duly sworn, acknowledged execution of the above and foregoing Memorandum of Parking Structure Lease for and on behalf of said City, having been authorized to do so.

WITNESS my hand and Notarial Seal this _____ day of _____, 20____.

Notary Public

Printed Name

My Commission Expires:

County of Residence:

**THE CITY OF FORT WAYNE, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of the City of Fort Wayne, Indiana, Department of Redevelopment, who, being first duly sworn, acknowledged execution of the above and foregoing Memorandum of Parking Structure Lease for and on behalf of said City, having been authorized to do so.

WITNESS my hand and Notarial Seal this _____ day of _____, 20__.

Notary Public

Printed Name

My Commission Expires:

County of Residence:

EXHIBIT A
TO MEMORANDUM OF PARKING STRUCTURE LEASE

LEGAL DESCRIPTION

Legal Description of the Parking Structure Parcel

Legal Description of the Mixed-Use Parcel

BILL NO. S-18-01-16

REPORT OF COMMITTEE ON FINANCE

February 13, 2018

Jason Arp Chair

John Crawford Co-Chair

All Council Members

A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of a parking structure lease and the appropriation of available County Economic Development Income Tax revenues and Local Income Tax revenues to pay rents due pursuant to a parking structure lease with regard to an economic development project for a new mixed-use riverfront building to be undertaken by Riverview FW LLC


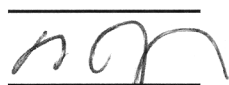
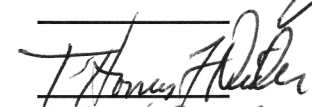

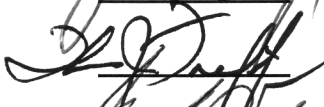



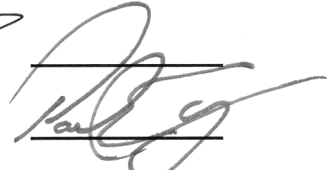
COMMITTEE ON FINANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

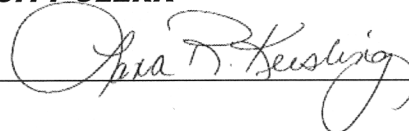
DO NOT PASS

ABSTAIN

NO REC

_____		_____	_____
_____	_____		_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____		_____	_____

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Arp.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilman Arp, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: February 13, 2018




 LANA R. KEESLING, CITY CLERK

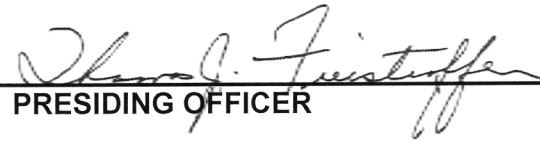
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-18-01-16 on the 13th day of February, 2018

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th of February 2018, at the hour of 9:25 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 15TH day of FEBRUARY

2018, at the hour of 7:30 O'clock AM. E.S.T.



 THOMAS C. HENRY, MAYOR